

Representative Stephen G. Handy proposes the following substitute bill:

MOTOR VEHICLE IMPOUND AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends provisions relating to towing and impoundment notifications.

Highlighted Provisions:

This bill:

- ▶ amends the sentencing requirements for DUI convictions by requiring payment of the administrative impound fee and towing and storage fees by the person convicted;
- ▶ requires the Motor Vehicle Division to provide notification to a dealer who has issued a temporary permit for a car that is towed and impounded; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-6a-505, as last amended by Laws of Utah 2015, Chapters 116 and 438

41-6a-1406, as last amended by Laws of Utah 2014, Chapter 249



26 [72-9-603](#), as last amended by Laws of Utah 2014, Chapter 249

27

28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **41-6a-505** is amended to read:

30 **41-6a-505. Sentencing requirements for driving under the influence of alcohol,**
31 **drugs, or a combination of both violations.**

32 (1) As part of any sentence for a first conviction of Section [41-6a-502](#):

33 (a) the court shall:

34 (i) (A) impose a jail sentence of not less than 48 consecutive hours;

35 (B) require the person to work in a compensatory-service work program for not less
36 than 48 hours; or

37 (C) require the person to participate in home confinement of not fewer than 48
38 consecutive hours through the use of electronic monitoring in accordance with Section
39 [41-6a-506](#);

40 (ii) order the person to participate in a screening;

41 (iii) order the person to participate in an assessment, if it is found appropriate by a
42 screening under Subsection (1)(a)(ii);

43 (iv) order the person to participate in an educational series if the court does not order
44 substance abuse treatment as described under Subsection (1)(b);

45 (v) impose a fine of not less than \$700; [~~and~~]

46 (vi) order probation for the person in accordance with Section [41-6a-507](#), if there is
47 admissible evidence that the person had a blood alcohol level of .16 or higher; [~~and~~]

48 (vii) (A) order the person to pay the administrative impound fee described in Section
49 [41-6a-1406](#); or

50 (B) if the administrative impound fee was paid by a party described in Subsection
51 [41-6a-1406\(5\)\(a\)](#), other than the person sentenced, order the person sentenced to reimburse the
52 party; or

53 (viii) (A) order the person to pay the towing and storage fees described in Section
54 [72-9-603](#); or

55 (B) if the towing and storage fees were paid by a party described in Subsection
56 [41-6a-1406\(5\)\(a\)](#), other than the person sentenced, order the person sentenced to reimburse the

57 party; and
58 (b) the court may:
59 (i) order the person to obtain substance abuse treatment if the substance abuse
60 treatment program determines that substance abuse treatment is appropriate; or
61 (ii) order probation for the person in accordance with Section [41-6a-507](#).
62 (2) If a person has a prior conviction as defined in Subsection [41-6a-501\(2\)](#) that is
63 within 10 years of the current conviction under Section [41-6a-502](#) or the commission of the
64 offense upon which the current conviction is based:
65 (a) the court shall:
66 (i) (A) impose a jail sentence of not less than 240 consecutive hours;
67 (B) require the person to work in a compensatory-service work program for not less
68 than 240 hours; or
69 (C) require the person to participate in home confinement of not fewer than 240
70 consecutive hours through the use of electronic monitoring in accordance with Section
71 [41-6a-506](#);
72 (ii) order the person to participate in a screening;
73 (iii) order the person to participate in an assessment, if it is found appropriate by a
74 screening under Subsection (2)(a)(ii);
75 (iv) order the person to participate in an educational series if the court does not order
76 substance abuse treatment as described under Subsection (2)(b);
77 (v) impose a fine of not less than \$800; [~~and~~]
78 (vi) order probation for the person in accordance with Section [41-6a-507](#); [~~and~~]
79 (vii) (A) order the person to pay the administrative impound fee described in Section
80 [41-6a-1406](#); or
81 (B) if the administrative impound fee was paid by a party described in Subsection
82 [41-6a-1406\(5\)\(a\)](#), other than the person sentenced, order the person sentenced to reimburse the
83 party; or
84 (viii) (A) order the person to pay the towing and storage fees described in Section
85 [72-9-603](#); or
86 (B) if the towing and storage fees were paid by a party described in Subsection
87 [41-6a-1406\(5\)\(a\)](#), other than the person sentenced, order the person sentenced to reimburse the

88 party; and

89 (b) the court may order the person to obtain substance abuse treatment if the substance
90 abuse treatment program determines that substance abuse treatment is appropriate.

91 (3) Under Subsection 41-6a-503(2), if the court suspends the execution of a prison
92 sentence and places the defendant on probation:

93 (a) the court shall impose:

94 (i) a fine of not less than \$1,500;

95 (ii) a jail sentence of not less than 1,500 hours; and

96 (iii) supervised probation; and

97 (b) in lieu of Subsection (3)(a)(ii), the court may require the person to participate in
98 home confinement of not fewer than 1,500 hours through the use of electronic monitoring in
99 accordance with Section 41-6a-506.

100 (4) For Subsection (3)(a) or Subsection 41-6a-503(2)(b), the court shall impose an
101 order requiring the person to obtain a screening and assessment for alcohol and substance
102 abuse, and treatment as appropriate.

103 (5) (a) The requirements of Subsections (1)(a), (2)(a), (3)(a), and (4) may not be
104 suspended.

105 (b) Probation or parole resulting from a conviction for a violation under this section
106 may not be terminated.

107 (6) If a person is convicted of a violation of Section 41-6a-502 and there is admissible
108 evidence that the person had a blood alcohol level of .16 or higher, the court shall order the
109 following, or describe on record why the order or orders are not appropriate:

110 (a) treatment as described under Subsection (1)(b), (2)(b), or (4); and

111 (b) one or more of the following:

112 (i) the installation of an ignition interlock system as a condition of probation for the
113 person in accordance with Section 41-6a-518;

114 (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring
115 device as a condition of probation for the person; or

116 (iii) the imposition of home confinement through the use of electronic monitoring in
117 accordance with Section 41-6a-506.

118 Section 2. Section 41-6a-1406 is amended to read:

119 **41-6a-1406. Removal and impoundment of vehicles -- Reporting and notification**
120 **requirements -- Administrative impound fee -- Refunds -- Possessory lien -- Rulemaking.**

121 (1) If a vehicle, vessel, or outboard motor is removed or impounded as provided under
122 Section [41-1a-1101](#), [41-6a-527](#), [41-6a-1405](#), [41-6a-1408](#), or [73-18-20.1](#) by an order of a peace
123 officer or by an order of a person acting on behalf of a law enforcement agency or highway
124 authority, the removal or impoundment of the vehicle, vessel, or outboard motor shall be at the
125 expense of the owner.

126 (2) The vehicle, vessel, or outboard motor under Subsection (1) shall be removed or
127 impounded to:

- 128 (a) a state impound yard; or
- 129 (b) if none, a garage, docking area, or other place of safety.

130 (3) The peace officer may move a vehicle, vessel, or outboard motor or cause it to be
131 removed by a tow truck motor carrier that meets standards established:

- 132 (a) under Title 72, Chapter 9, Motor Carrier Safety Act; and
- 133 (b) by the department under Subsection (10).

134 (4) (a) Immediately after the removal of the vehicle, vessel, or outboard motor, a report
135 of the removal shall be sent to the Motor Vehicle Division by:

- 136 (i) the peace officer or agency by whom the peace officer is employed; and
- 137 (ii) the tow truck operator or the tow truck motor carrier by whom the tow truck
138 operator is employed.

139 (b) The report shall be in a form specified by the Motor Vehicle Division and shall
140 include:

- 141 (i) the operator's name, if known;
- 142 (ii) a description of the vehicle, vessel, or outboard motor;
- 143 (iii) the vehicle identification number or vessel or outboard motor identification
144 number;
- 145 (iv) the license number, temporary permit number, or other identification number
146 issued by a state agency;
- 147 (v) the date, time, and place of impoundment;
- 148 (vi) the reason for removal or impoundment;
- 149 (vii) the name of the tow truck motor carrier who removed the vehicle, vessel, or

150 outboard motor; and

151 (viii) the place where the vehicle, vessel, or outboard motor is stored.

152 (c) Until the tow truck operator or tow truck motor carrier reports the removal as
153 required under this Subsection (4), a tow truck motor carrier or impound yard may not:

154 (i) collect any fee associated with the removal; and

155 (ii) begin charging storage fees.

156 (5) (a) Except as provided in Subsection (5)(e) and upon receipt of the report, the
157 Motor Vehicle Division shall give notice ~~[to]~~, in the manner described in Section [41-1a-114](#), to
158 the following parties with an interest in the vehicle, vessel, or outboard motor, as applicable:

159 (i) the registered owner ~~[of the vehicle, vessel, or outboard motor and]~~;

160 (ii) any lien holder ~~[in the manner prescribed by Section [41-1a-114](#)];~~ or

161 (iii) a dealer, as defined in Section [41-1a-102](#), if the vehicle, vessel, or outboard motor
162 is currently operating under a temporary permit issued by the dealer, as described in Section
163 [41-3-302](#).

164 (b) The notice shall:

165 (i) state the date, time, and place of removal, the name, if applicable, of the person
166 operating the vehicle, vessel, or outboard motor at the time of removal, the reason for removal,
167 and the place where the vehicle, vessel, or outboard motor is stored;

168 (ii) state that the registered owner is responsible for payment of towing, impound, and
169 storage fees charged against the vehicle, vessel, or outboard motor;

170 (iii) ~~[inform the registered owner of the vehicle, vessel, or outboard motor of]~~ state the
171 conditions that must be satisfied before the vehicle, vessel, or outboard motor is released; and

172 (iv) inform the ~~[registered owner and lienholder]~~ parties described in Subsection (5)(a)
173 of the division's intent to sell the vehicle, vessel, or outboard motor, if, within 30 days [from
174 the date] after the day of the removal or impoundment under this section, [the owner, lien
175 holder, or the owner's agent] one of the parties fails to make a claim for release of the vehicle,
176 vessel, or outboard motor.

177 (c) Except as provided in Subsection (5)(e) and if the vehicle, vessel, or outboard
178 motor is not registered in this state, the Motor Vehicle Division shall make a reasonable effort
179 to notify the ~~[registered owner and any lien holder]~~ parties described in Subsection (5)(a) of the
180 removal and the place where the vehicle, vessel, or outboard motor is stored.

181 (d) The Motor Vehicle Division shall forward a copy of the notice to the place where
182 the vehicle, vessel, or outboard motor is stored.

183 (e) The Motor Vehicle Division is not required to give notice under this Subsection (5)
184 if a report was received by a tow truck operator or tow truck motor carrier reporting a tow truck
185 service in accordance with Subsection 72-9-603(1)(a)(i).

186 (6) (a) The vehicle, vessel, or outboard motor shall be released after [~~the registered~~
187 ~~owner, lien holder, or the owner's agent~~] a party described in Subsection (5)(a):

188 (i) makes a claim for release of the vehicle, vessel, or outboard motor at any office of
189 the State Tax Commission;

190 (ii) presents identification sufficient to prove ownership of the impounded vehicle,
191 vessel, or outboard motor;

192 (iii) completes the registration, if needed, and pays the appropriate fees;

193 (iv) if the impoundment was made under Section 41-6a-527, pays an administrative
194 impound fee of \$350; and

195 (v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard
196 motor is stored.

197 (b) (i) Twenty-nine dollars of the administrative impound fee assessed under
198 Subsection (6)(a)(iv) shall be dedicated credits to the Motor Vehicle Division;

199 (ii) \$97 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be
200 deposited in the Department of Public Safety Restricted Account created in Section 53-3-106;

201 (iii) \$20 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall
202 be deposited in the Traumatic Spinal Cord and Brain Injury Rehabilitation Fund; and

203 (iv) the remainder of the administrative impound fee assessed under Subsection
204 (6)(a)(iv) shall be deposited in the General Fund.

205 (c) The administrative impound fee assessed under Subsection (6)(a)(iv) shall be
206 waived or refunded by the State Tax Commission if the registered owner, lien holder, or
207 owner's agent presents written evidence to the State Tax Commission that:

208 (i) the Driver License Division determined that the arrested person's driver license
209 should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as shown by a letter
210 or other report from the Driver License Division presented within 30 days of the final
211 notification from the Driver License Division; or

212 (ii) the vehicle was stolen at the time of the impoundment as shown by a copy of the
213 stolen vehicle report presented within 30 days of the impoundment.

214 (d) A tow truck operator, a tow truck motor carrier, and an impound yard shall accept
215 payment by cash and debit or credit card for a removal or impoundment under Subsection (1)
216 or any service rendered, performed, or supplied in connection with a removal or impoundment
217 under Subsection (1).

218 (e) The owner of an impounded vehicle may not be charged a fee for the storage of the
219 impounded vehicle, vessel, or outboard motor if:

220 (i) the vehicle, vessel, or outboard motor is being held as evidence; and

221 (ii) the vehicle, vessel, or outboard motor is not being released to ~~[the registered owner,~~
222 ~~lien holder, or the owner's agent]~~ a party described in Subsection 5(a), even if the ~~[registered~~
223 ~~owner, lien holder, or the owner's agent]~~ party satisfies the requirements to release the vehicle,
224 vessel, or outboard motor under this Subsection (6).

225 (7) (a) An impounded vehicle, vessel, or outboard motor not claimed by ~~[the registered~~
226 ~~owner or the owner's agent]~~ a party described in Subsection (5)(a) within the time prescribed by
227 Section [41-1a-1103](#) shall be sold in accordance with that section and the proceeds, if any, shall
228 be disposed of as provided under Section [41-1a-1104](#).

229 (b) The date of impoundment is considered the date of seizure for computing the time
230 period provided under Section [41-1a-1103](#).

231 (8) ~~[The registered owner who]~~ A party described in Subsection (5)(a) that pays all fees
232 and charges incurred in the impoundment of the owner's vehicle, vessel, or outboard motor~~;~~
233 has a cause of action for all the fees and charges, together with damages, court costs, and
234 attorney fees, against the operator of the vehicle, vessel, or outboard motor whose actions
235 caused the removal or impoundment.

236 (9) Towing, impound fees, and storage fees are a possessory lien on the vehicle, vessel,
237 or outboard motor.

238 (10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
239 the department shall make rules setting the performance standards for towing companies to be
240 used by the department.

241 (11) (a) The Motor Vehicle Division may specify that a report required under
242 Subsection (4) be submitted in electronic form utilizing a database for submission, storage, and

243 retrieval of the information.

244 (b) (i) Unless otherwise provided by statute, the Motor Vehicle Division or the
245 administrator of the database may adopt a schedule of fees assessed for utilizing the database.

246 (ii) The fees under this Subsection (11)(b) shall:

247 (A) be reasonable and fair; and

248 (B) reflect the cost of administering the database.

249 Section 3. Section **72-9-603** is amended to read:

250 **72-9-603. Towing notice requirements -- Cost responsibilities -- Abandoned**

251 **vehicle title restrictions -- Rules for maximum rates and certification.**

252 (1) Except for a tow truck service that was ordered by a peace officer, or a person
253 acting on behalf of a law enforcement agency, or a highway authority, after performing a tow
254 truck service that is being done without the vehicle, vessel, or outboard motor owner's
255 knowledge, the tow truck operator or the tow truck motor carrier shall:

256 (a) immediately upon arriving at the place of storage or impound of the vehicle, vessel,
257 or outboard motor:

258 (i) send a report of the removal to the Motor Vehicle Division that complies with the
259 requirements of Subsection [41-6a-1406\(4\)\(b\)](#); and

260 (ii) contact the law enforcement agency having jurisdiction over the area where the
261 vehicle, vessel, or outboard motor was picked up and notify the agency of the:

262 (A) location of the vehicle, vessel, or outboard motor;

263 (B) date, time, and location from which the vehicle, vessel, or outboard motor was
264 removed;

265 (C) reasons for the removal of the vehicle, vessel, or outboard motor;

266 (D) person who requested the removal of the vehicle, vessel, or outboard motor; and

267 (E) vehicle, vessel, or outboard motor's description, including its identification number
268 and license number or other identification number issued by a state agency;

269 (b) within two business days of performing the tow truck service under Subsection
270 (1)(a), send a certified letter to the last-known address of ~~the registered owner and lien holder~~
271 of each party described in Subsection [41-6a-1406\(5\)\(a\)](#) with an interest in the vehicle, vessel,
272 or outboard motor obtained from the Motor Vehicle Division or, if the person has actual
273 knowledge of the owner's party's address, to the current address, notifying the owner party

274 of the:

- 275 (i) location of the vehicle, vessel, or outboard motor;
- 276 (ii) date, time, and location from which the vehicle, vessel, or outboard motor was
277 removed;
- 278 (iii) reasons for the removal of the vehicle, vessel, or outboard motor;
- 279 (iv) person who requested the removal of the vehicle, vessel, or outboard motor;
- 280 (v) a description, including its identification number and license number or other
281 identification number issued by a state agency; and
- 282 (vi) costs and procedures to retrieve the vehicle, vessel, or outboard motor; and
- 283 (c) upon initial contact with the owner whose vehicle, vessel, or outboard motor was
284 removed, provide the owner with a copy of the Utah Consumer Bill of Rights Regarding
285 Towing established by the department in Subsection (7)(e).

286 (2) (a) Until the tow truck operator or tow truck motor carrier reports the removal as
287 required under Subsection (1)(a), a tow truck operator, tow truck motor carrier, or impound
288 yard may not:

- 289 (i) collect any fee associated with the removal; or
- 290 (ii) begin charging storage fees.
- 291 (b) (i) Except as provided in Subsection (2)(c), a tow truck operator or tow truck motor
292 carrier may not perform a tow truck service without the vehicle, vessel, or outboard motor
293 owner's or a lien holder's knowledge at either of the following locations without signage that
294 meets the requirements of Subsection (2)(b)(ii):
 - 295 (A) a mobile home park as defined in Section 57-16-3; or
 - 296 (B) a multifamily dwelling of more than eight units.
- 297 (ii) Signage under Subsection (2)(b)(i) shall display:
 - 298 (A) where parking is subject to towing; and
 - 299 (B) (I) the Internet website address that provides access to towing database information
300 in accordance with Section 41-6a-1406; or
 - 301 (II) one of the following:
 - 302 (Aa) the name and phone number of the tow truck operator or tow truck motor carrier
303 that performs a tow truck service for the locations listed under Subsection (2)(b)(i); or
 - 304 (Bb) the name of the mobile home park or multifamily dwelling and the phone number

305 of the mobile home park or multifamily dwelling manager or management office that
306 authorized the vehicle, vessel, or outboard motor to be towed.

307 (c) Signage is not required under Subsection (2)(b) for parking in a location:

308 (i) that is prohibited by law; or

309 (ii) if it is reasonably apparent that the location is not open to parking.

310 (d) Nothing in Subsection (2)(b) restricts the ability of a mobile home park as defined
311 in Section 57-16-3 or a multifamily dwelling from instituting and enforcing regulations on
312 parking.

313 (3) The ~~[owner of]~~ party described in Subsection 41-6a-1406(5)(a) with an interest in a
314 vehicle, vessel, or outboard motor lawfully removed is only responsible for paying:

315 (a) the tow truck service and storage fees set in accordance with Subsection (7); and

316 (b) the administrative impound fee set in Section 41-6a-1406, if applicable.

317 (4) The fees under Subsection (3) are a possessory lien on the vehicle, non-life
318 essential items that are owned by the owner of the vehicle and securely stored by the tow truck
319 operator, vessel, or outboard motor until paid.

320 (5) A person may not request a transfer of title to an abandoned vehicle until at least 30
321 days after notice has been sent under Subsection (1)(b).

322 (6) (a) A tow truck motor carrier or impound yard shall clearly and conspicuously post
323 and disclose all its current fees, rates, and acceptable forms of payment for tow truck service
324 and storage of a vehicle in accordance with rules established under Subsection (7).

325 (b) A tow truck operator, a tow truck motor carrier, and an impound yard shall accept
326 payment by cash and debit or credit card for a tow truck service under Subsection (1) or any
327 service rendered, performed, or supplied in connection with a tow truck service under
328 Subsection (1).

329 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
330 Department of Transportation shall:

331 (a) subject to the restriction in Subsection (8), set maximum rates that:

332 (i) a tow truck motor carrier may charge for the tow truck service of a vehicle, vessel,
333 or outboard motor that are transported in response to:

334 (A) a peace officer dispatch call;

335 (B) a motor vehicle division call; and

336 (C) any other call or request where the owner of the vehicle, vessel, or outboard motor
337 has not consented to the removal; and

338 (ii) an impound yard may charge for the storage of a vehicle, vessel, or outboard motor
339 stored as a result of one of the conditions listed under Subsection (7)(a)(i);

340 (b) establish authorized towing certification requirements, not in conflict with federal
341 law, related to incident safety, clean-up, and hazardous material handling;

342 (c) specify the form and content of the posting and disclosure of fees and rates charged
343 and acceptable forms of payment by a tow truck motor carrier or impound yard;

344 (d) set a maximum rate for an administrative fee that a tow truck motor carrier may
345 charge for reporting the removal as required under Subsection (1)(a)(i) and providing notice of
346 the removal to ~~[the registered owner and lienholder of]~~ each party described in Subsection
347 41-6a-1406(5)(a) with an interest in the vehicle, vessel, or outboard motor as required in
348 Subsection (1)(b); and

349 (e) establish a Utah Consumer Bill of Rights Regarding Towing form that contains
350 specific information regarding:

351 (i) a vehicle owner's rights and responsibilities if the owner's vehicle is towed;

352 (ii) identifies the maximum rates that a tow truck motor carrier may charge for the tow
353 truck service of a vehicle, vessel, or outboard motor that is transported in response to a call or
354 request where the owner of the vehicle, vessel, or outboard motor has not consented to the
355 removal; and

356 (iii) identifies the maximum rates that an impound yard may charge for the storage of
357 vehicle, vessel, or outboard motor that is transported in response to a call or request where the
358 owner of the vehicle, vessel, or outboard motor has not consented to the removal.

359 (8) An impound yard may not charge a fee for the storage of an impounded vehicle,
360 vessel, or outboard motor if:

361 (a) the vehicle, vessel, or outboard motor is being held as evidence; and

362 (b) the vehicle, vessel, or outboard motor is not being released to ~~[the registered owner,~~
363 ~~lien holder, or the owner's agent]~~ a party described in Subsection 41-6a-1406(5)(a), even if the
364 ~~[registered owner, lien holder, or the owner's agent]~~ party satisfies the requirements to release
365 the vehicle, vessel, or outboard motor under Section 41-6a-1406.